

Subject: THE FREEDOM OF INFORMATION ACT

1-120-00	Scope
05	Policy
10	Responsibilities
15	Operating Guidelines
20	Requests from Congress
25	Relationship Between the FOIA and the Privacy Act
30	Sanctions
35	Administrative Deadlines
40	Department-wide Schedule of Fees
45	Annual Report to Congress

1-120-00 SCOPE

- A. **This chapter** sets forth the Department's policies, practices and procedures for **implementing and administering the Freedom of Information Act (FOIA)** as amended by P. L. 99-570. **Further guidance and details are contained in** the Department's implementing Public Information Regulation (45 **CFR, Part 5**), **as amended.**
- B. **The Freedom of Information Act** requires that all records and documents **in** the possession of **Federal** agencies be made available upon request for inspection **and/or** copying unless **the** records or documents fall within **one** or **more** of the nine specific exemptions identified in the Act.

1-120105 POLICY

- A. **The Department's** policy calls for the fullest responsible disclosure consistent with **those** requirements of confidentiality and administrative necessity **which are recognized in the Freedom of Information Act.** It is the practice of the **Department,** therefore, to **make** records available whenever it is **possible** to do so without violating the rights of individuals or organizations or **impeding** the **Department's** ability to perform its functions.
- B. **The Act** identifies nine specific exemptions **which** agencies may **employ** to **withhold** records.

1-120-10 RESPONSIBILITIES

- A. The Assistant Secretary for public Affairs is responsible for establishing, Departmental Freedom of Information Act policies, coordinating, monitoring, *compiling reports to Congress*, and providing training and technical assistance to Operating Divisions (OPDIVS).
- B. The Department's Freedom of Information Officer is responsible for recommending and implementing policies and procedures to ensure compliance with the requirements of the Act and coordinating consistent application throughout the Department.
- c. Only Freedom of Information Officers as listed below have the authority to release or deny records in response to FOIA requests and to charge, waive, or reduce fees for processing FOIA requests.
- D. Freedom of Information Officers
- | | |
|---|---|
| 1. Office of the Secretary
Family Support Administration
Office of Human Development Services | Director, FOIA/Privacy Act
Division, Office of Public
Affairs |
| 2. Public Health Service | |
| (a) Office of Assistant Secretary
for Health | FOIA Officer, PHS |
| (b) Agency for Health Care Policy
and Research | FOIA Officer, AHCPR |
| (c) Alcohol, Drug Abuse, and
Mental Health Administration | FOIA Officer, Office of
Communications & External
Affairs |
| (d) centers for Disease Control | Director, Office of public
Affairs |
| (e) Food and Drug Administration | Associate Commissioner for
Public Affairs |
| (f) Health Resources and Services
Administration | Associate Administrator
Office of Communications |
| (g) Indian Health Service | Director, Office of
Communications |
| (h) National Institutes of Health | Director, Office of
Communications |

HHS Chapter 1-120
General Administration Manual
HHS Transmittal 90.07 (10/31/90)

- 3. Social Security Administration **Director**
Office of Public Inquiries
- 4. Health Care Financing Administration **Director**, Office of Public
Affairs

E. A decision by one of these officials to deny a **request** for records or to refuse to waive fees may be appealed to the appropriate review authority as **follows**:

Review Authority

- 0 **Office of the Secretary** Assistant Secretary for
Public Affairs
- 0 Family **Support** Administration Assistant Secretary, **FSA**
- 0 **Office of Human Development** Services Assistant Secretary for
Human Development Services
- 0 **Public Health Service (all components)** Assistant Secretary for
Health
- 0 **Social Security Administration** **Commissioner**, SSA, or Designee
- 0 **Health Care Financing Administration** Administrator, **HCFA**

F. Before making a decision on an appeal of a denial, the designated review official will **consult** with the appropriate **Division** of the Office of the General **Counsel** to ensure that the rights **and** interests of all parties affected by the **request** are protected. Also, the **concurrence** of the Assistant Secretary for Public Affairs is **required** on all **appeal decisions, including those on fees**. When the review official **responds** to an appeal, that constitutes the Department's final action **on** the **request**.

1-120-15 OPERATING GUIDELINES

- A. A "**Freedom of Information request**" is any **request** for existing records, in the **control**, custody, or possession of the Department. **Some** requests for records may also be "Privacy Act requests." (See Section 1-120-20 below). **Requests** for "information" (as distinguished from **requests** for "**records**") or requests for **copies** of publications and other information materials **produced for public distribution** are not "**Freedom of Information requests**" and should be handled in **accordance** with established procedures for responding to public inquiries.
- B. **Oral** requests may be made to a **Freedom of Information** Officer whose staff will **put** in writing such requests. **This** is to ensure the requester's

rights as **provided** by the **FOIA** and the Department's regulations such as the right to appeal in the case when a denial is **made**.

- c. Even **though** requests for records do not **make** specific reference to the **Freedom of Information Act** or the Department's Public Information **Regulation**, they must be treated as **though they did**. Search, review, and copying fees may be charged to the requester in accordance with the provisions set forth in the Public Information **Regulation**.

D. Releasing Records

1. If all records responding to the request are to **be** released, **the FOI Officer** will **send one** of the two copies provided by the program office to the requester, together with a letter that informs the requester that:
 - (a) All records that fall within the scope of the request are enclosed (or will be sent at a later date):
 - (b) No deletions have been made and no records withheld; **and**
 - (c) An invoice for fees is enclosed for **allowable charges** or that the fees are waived.
2. If a **reasonable** search fails to locate the records, **the** requester will be notified in writing. Such a notice does not constitute a denial of access **to records**.

E. Withholding Records

When any deletion is **made** from records that will be released, or when any record is withheld, the **FOI Officer** making that decision, will notify the requester in writing and

1. **Describe** the deleted portions or withheld records in general **terms** only;
2. State the **FOIA** exemption **and** the provision of the Public Information Regulation that permits the withholding;
3. Enclose an invoice for fees for allowable **charges** or waive the fees;
4. **Explain** the requester's right to **appeal** the decision not to **comply** fully with the **request**, and identify the official to **whom** the apply should be sent:

5. **Maintain** appropriate **documentation** of records or portions withheld in case of an appeal.

F. Appeals

In the event of an appeal, the appropriate review official will:

1. Obtain the records from the **FOI Officer**:
2. **Conduct** an independent evaluation of the initial determination:
3. **Consult** with the **Office of General Counsel** and obtain **concurrence** of the Assistant Secretary for Public Affairs:
4. **Notify** the requester of this final agency decision and the right to seek judicial review:
5. **Prepare a description of** any records that are **to be** denied an appeal in sufficient detail to apprise the requester of the nature of **the documents** denied, if adequate **explanation has** not already been provided; and
6. **Maintain appropriate documentation** concerning the disposition of appeals.

(HHS regulations require **FOI appeals** files to be maintained for four (4) years after final **determination** by the agency, or three (3) years after final adjudication by courts, whichever is later.)

1-120-x) **REQUESTS FROM CONGRESS**

When a **FOIA** request is received from a **Member of Congress**, it should be first determined whether it is a duly authorized **request on behalf of Congress** through a legislative **committee** or **subcommittee**. If so, the request falls within subsection (c) of the **FOIA** and **only** a specially authorized claim of executive privilege **could** be **interposed** to justify **nondisclosure**. Any **FOIA** request submitted by the **chairman of a committee or subcommittee** on a subject within its jurisdiction **should** routinely fall into this category. If the request is **not** an official **committee** or subcommittee request, it should then be processed as a request from "**any person**" under the **FOIA**, but with particular regard for the consideration of congressional relations.

1-120-25 **RELATIONSHIP BETWEEN THE FOIA AND THE PRIVACY ACT**

- A. **The FOIA applies to all requests for records whether or not the records are maintained in a designated Privacy Act System of Records.**
- B. **The Privacy Act gives individuals the right of access to most records about themselves that are in a designated Privacy Act System of Records.**
- C. **If an individual requests access to a record concerning himself, retrieved by his/her name or personal identifier, and contained in a designated Privacy Act System of Records, the HHS employee receiving the request should mark it "PRIVACY ACT REQUEST" and route it without delay to the appropriate System Manager, as identified in the System notice.**
- D. **If a requester requests records concerning an individual other than himself and the records are contained in a designated Privacy Act System of Records, the request constitutes an FOI request. Unless disclosure is required by the FOIA, the Privacy Act prohibits disclosure of the records. The FOIA requires disclosure of records in a designated Privacy Act System of Records to a third party who requests them unless FOIA's Exemption 6 applies because "disclosure would constitute a clearly unwarranted invasion of personal privacy," or if any other FOIA exemption applies. In making a personal privacy determination, we will balance an individual's right to privacy against the public interest in disclosure of the records. Public interest in this context is limited to the kind of public interest for which Congress enacted the FOIA, i.e., to provide significant insight into an agency's performance of its statutory duties.**
- E. **If a requester mislabels a request, mistakenly saying it falls under one Act rather than the other, we will place it in the proper channels, and, in any event, we will apply the Act that provides the most information.**

1-120-30 **SANCTIONS**

The 1974 Amendments to the Freedom of Information Act empower a District Court to hear Freedom of Information cases and to determine whether or not an agency's personnel acted arbitrarily or capriciously in withholding requested records. If the court so finds, the Office of Special Counsel must initiate a proceeding promptly to determine whether disciplinary action is warranted against the responsible official(s) or employee(s). The Special Counsel's findings and recommendations are to be submitted to the appropriate

administrative authority of the agency and to **the** responsible official or **employee**. **The** administrative authority shall take **the** disciplinary action recommended by **the** Special Counsel. (5 U.S.C. 552(a)(4)(F))

1-120-35 ADMINISTRATIVE DEADLINES

- A. Determinations **on whether** records are **to be** released or withheld must be made and the requester notified within 10 working days of the date of receipt in the responsible FOI office. Extensions of time will not normally be granted. However, **the time limit may be** extended by written notice to the requester for not longer than an additional 10 working days **only** in unusual circumstances. **The term "unusual circumstances"** includes the need:
1. **To** search for and collect the **requested** records **from** field facilities or other establishments that are separate from the office processing the **request**;
 2. **To** search for, collect, and examine a voluminous **amount of** separate **and** distinct records which are involved in a single request;
 3. **For** consultation which shall be conducted with all practicable speed with another office or **agency having** a substantial interest in the determination of the request or **among** two or **more components** or the agency having substantial subject-matter interest.
 4. **To** conduct negotiations with submitters and requesters of information to determine the **nature and** extent of **non-disclosable** materials.
- B. If **such** extension is required, the requester will be notified in writing **with an explanation of why the extension was necessary and** the date by which a **determination will** be made. **Only** the officials designated in section 1-120-10 are authorized to extend the time limits **on** initial review.
- C. **Decisions on appeals must be** transmitted in writing within 20 working days **from** receipt **in** the office of the **appeal** official. **Extension** of the time limit may be **granted only** for the number of days not used to extend the initial determination period up to a maximum of 10 days. **Such extension may be granted only for the reasons** previously stated.
- D. Failure to **meet** either of these deadlines entitles the requester to **consider** his administrative remedies as **exhausted** and to seek **immediate** judicial review.

1-120-40 DEPARTMENT-WIDE SCHEDULE OF FEES

- A. A detailed schedule of fees for **processing FOIA** requests is set forth in the **Public Information Regulation 45 CFR Subpart E**. The officials responsible for making initial determinations **shown** in Section 1-120-10 **shall also determine whether** fees are to be charged or **waived in responding to requests** for records. If a fee is to be assessed, the responsible **FOI Officer will determine the** actual or estimated **charge** for **providing** the record to the requester. There is no charge for processing an **FOIA** request when the cost of collection **would** exceed the amount of the fee.
- B. **The Anti-Drug Abuse Act of 1986 (P.L. 99-570)** amended the **Freedom of Information Act** by **establishing** three categories of requesters and the **incremental charges** that can be assessed against them:
1. Fees are limited to reasonable standard **charges** for **document search, duplication and review** when records are requested for **commercial** use:
 2. **Fees are limited to standard charges for document duplication only when the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research; or a representative of the news media; and**
 3. **For any request not described in (1) and (2) above, fees are limited to reasonable standard charges for document search and duplication.**
- C. **Fee schedules are limited to only the direct costs of search, review and duplication. Review costs** are limited to time spent during the **initial examination of a document to determine** whether the **document must be disclosed. Review costs** cannot include time spent in **resolving** issues of law or policy.
- D. **No fee may be charged** to requester in **the subsections (2) and (3) above**
- 0 If **the cost of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or**
 - 0 **For the first two hours of search or for the first one hundred pages of duplication.**
- E. **Fees will be paid by check, money order or credit card payable to the "U.S. Department of Health and Human Services" or to the unit as directed in the billing invoice.**

- F. Advance **payment** may not **be** required of a requester unless the requester has failed to pay fees for an earlier request in a timely fashion or **the FOI Officer has determined that the fee will exceed \$250.**
- G. Documents must be provided without charge or at a reduced charge if disclosure of **the information** is in the public interest because it is likely to contribute significantly to public understanding of the **operations** or activities of the Department and is not primarily in the **commercial** interest of the requester.
- H. **Requesters who have been denied a fee waiver or reduction may appeal to one of the reviewing authorities specified in 1-120-10.**

1-12045 ANNUAL REPORT TO CONGRESS

- A. **The 1974 amendments to the Freedom of Information Act require that the Department submit an annual report on or before March 1 of each calendar year to the Speaker of the House and to the President of the Senate for referral to the appropriate committees of the Congress. The report should include:**
1. The number of determinations not to **comply** with requests for records **and the reasons for each determination;**
 2. The number of appeals and **the reasons** for the action taken on each **appeal** that results in a denial of **information;**
 3. **The names and titles or positions of each person responsible for the denial of records requested under this section and the number of instances of participation for each;**
 4. **The result of each proceeding involving the sanction provision of the 1974 amendments, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;**
 5. A copy of **every rule** made in **connection with the Freedom of Information Act;**
 6. A copy of the fee schedule and the total **amount** of fees collected for making records available: and

7. **Such** other information as indicates efforts to properly administer the **Freedom** of Information Act. The **Department's Freedom** of Information Officer will coordinate the **compilation** of data to **be** included in the annual report to **Congress and** will issue instructions **to** public affairs officials **on** format and procedures.
- B. Each FOIA official responsible for making** initial determinations on **Freedom** of Information requests will **complete** and forward to the **Department's Freedom of Information** Officer on an annual basis a **Freedom of Information Act Report.**

AGENCY:

REPORTING PERIOD:

(From) _____ (To) _____

DATE OF REQUEST	REQUESTOR OR APPELLANT	DOCUMENT(S) REQUESTED	ACTION OFFICE	INTERIM RESPONSE DATE	RESPONSE DATE	ACTION IF A DENIAL (CITATION IF A DENIAL)	APPEAL DATE	INTERIM APPEAL RESPONSE DATE	FINAL APPEAL RESPONSE DATE	NATURE OF APPEAL RESPONSE (Approved, Denied)
8/17/73	Jo J. Doe Arbrey at Law 13 Blank Ave. La Angeles, CA 90009	Audit Report: LA County Schools	OCR		8/27/73	Denied: 5 USC 552 b)(4) & 45 CFR Sec. 5.73	9/15/73	9/28/73	10/20/73	Denied
8/20/73	Ja Smith Natl Student Lobby 17 K St, NW Wa DC 20006	Copy of letter from Secretary to Dr. John Fox, CA State Supt. of Schools	ES		8/28/73	Granted				
8/21/73	DcG. Brown Fbflex Sysys. Inc 85 Choice Lane Norich, Conn. 00021	Copy of Contract MFP-000-73-HEW-06	OASAM	8/29/73	9/16/73	Partial Denial: 5 USC 552(b)(4) & 45 CFR Sec. 5.73				



HW-73.14 (10/17/73)